

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
September 13, 2005 Session

JIM SOWELL v. LINDA CHRISTY

**Appeal from the Chancery Court for Dickson County
No. 8793-03 George C. Sexton, Judge**

No. M2004-02186-COA-R3-CV - Filed March 8, 2006

A client lost confidence in the attorney she hired to represent her in a workers' compensation action after he had put about five hours of effort into her case and before he filed a complaint. She discharged him and subsequently retained another attorney, who filed a complaint on her behalf. The first attorney filed an intervening complaint to protect his right to payment. The second attorney helped the woman settle her claim for about \$46,000. After a hearing on the intervening complaint, the trial court granted the first attorney a *quantum meruit* award of \$742.90. The attorney argues on appeal that he is entitled to 20% of his former client's recovery, pursuant to his contingency contract. Because the court had the authority under the workers' compensation statute not to approve an unreasonable fee, we affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Affirmed**

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and WILLIAM B. CAIN, J., joined.

Jim Sowell, Dickson, Tennessee, for the appellant, Jim Sowell.

Timothy V. Potter, Dickson, Tennessee, for the appellee, Linda Christy.

OPINION

I. AN INTERVENING COMPLAINT

Linda Christy injured her lower back in August of 2002 while moving packages of meat for her employer, Tennessee Quality Foods. She subsequently underwent surgery for the injury. On March 6, 2003, she hired attorney Jim Sowell to represent her in a workers' compensation claim against the employer. Ms. Christy signed a Contract for Attorney's Services with Mr. Sowell, which stated ". . . said ATTORNEY is to render his services in this case on a contingent basis; that is, if

recovery is had, the said ATTORNEY is to receive 20% of the amount recovered as his fee for services rendered.¹

In October of 2003, prior to the filing of any complaint or any settlement discussion with the employer, Ms. Christy went to Mr. Sowell's office to ask him a few questions. She asked if her employer could terminate her from employment, since she was under a doctor's care and not able to work. The attorney responded that she had asked him a question he could not answer. Ms. Christy then asked him if she had to enroll in COBRA for health insurance. Mr. Sowell said that this was another question he could not answer.

After this discussion, Ms. Christy lost confidence in Mr. Sowell and decided to terminate the attorney-client relationship with him. Mr. Sowell had her sign a receipt and release agreement, and he returned to her all the documents relating to the case. Ms. Christy then hired another attorney, Timothy Potter, to prosecute her case. On December 31, 2003, Mr. Potter filed a Complaint on behalf of Ms. Christy.

Shortly thereafter, Mr. Sowell filed a Motion to Intervene in the case, pursuant to Tenn. R. Civ. P. 24.01, to protect his interest in any recovery had by Ms. Christy. He asked the court to find that he had been discharged without cause and to enforce the Contract for Attorney's Services by awarding him the 20% contractual fee. The trial court granted the motion to intervene, and Ms. Christy filed an offer of judgment to settle Mr. Sowell's claim for \$742.90, based upon the time he expended on the case and a billing rate of \$150 per hour.

Ms. Christy and her employer eventually reached a settlement of her claim. On June 7, 2004, the court filed an order approving a lump-sum payment of the settlement in the amount of \$46,265.44. After a hearing on Mr. Sowell's intervening complaint, the trial court ordered that he be paid on a *quantum meruit* basis for the services he actually rendered and awarded him the exact amount offered by Ms. Christy, "\$742.90 which equates to a fee of \$150.00 per hour for 4.95 hours of work actually performed."² This appeal followed.

II. ANALYSIS

Mr. Sowell has presented only one issue for review: whether the trial court erred in awarding him a *quantum meruit* recovery rather than the entire 20% contingency fee that Ms. Christy initially agreed to. Both parties have focused their arguments on the proper application of a few pertinent cases that have dealt with the obligations of a former client to an attorney discharged by that client. However, we believe the workers' compensation law provides the appropriate basis for determining the question.

¹Fees for attorneys in workers' compensation cases are statutorily limited to 20% of the amount recovered. Tenn. Code Ann. § 50-6-226(a).

²The correct calculation would actually produce an award of \$742.50, and we assume the amount in the motion and order is a typographical error.

A. “OBJECTIVE REASONABLENESS”

It is well established that a client has a right to discharge his attorney with or without cause at any time. “The relation between attorney and client is such that the client is justified in seeking to dissolve that relation whenever he ceases to have absolute confidence in either the integrity, the judgment, or the capacity of the attorney.” *Chambliss, Bahner and Crawford v. Luther*, 531 S.W.2d 110 (Tenn. Ct. App. 1975) (quoting 6 Corpus Juris, 670-677). However, the discharged attorney is entitled to just compensation for the services that have been rendered. *Adams v. Mellen*, 618 S.W.2d 485, 488 (Tenn. Ct. App. 1981).³

Where there is a contract between attorney and client for compensation on either a contingency or flat-fee basis, and the attorney is discharged prior to the resolution of the case, the attorney is entitled to sue for either the full amount contemplated by the contract, or *quantum meruit*, an amount measured by the value of the work the attorney actually performed. See *Brownlow v. Payne*, 2 Tenn. App. 154, 162 (1925)(certiorari denied Jan. 30, 1926).

An attorney who is discharged without cause can recover on the basis of the full contract price or on *quantum meruit*, whichever is greater. Conversely, an attorney discharged with cause can recover on the basis of the full contract price or on *quantum meruit*, whichever is less. *Adams v. Mellen*, 618 S.W.2d 485, 490 (Tenn. Ct. App. 1981). To establish that the discharge was for cause, the client must first prove that the action was the result of an actual loss of confidence in the attorney and also that it was objectively reasonable. *Rose v. Welch*, 115 S.W.3d 478 (Tenn. 2003).

“[i]f an objective standard is not utilized, any client would be able to defeat a contractually agreed fee agreement so long as the attorney is discharged for a client’s loss of confidence for any reason, no matter how objectively irrational or unreasonable the stated reason for the loss of confidence may be. Such a result would, for all practical purposes, make every discharge of an attorney ‘for cause.’”

115 S.W.3d at 486.

Mr. Sowell does not challenge Ms. Christy’s contention that she actually lost confidence in him after he failed to answer the two questions she asked him. He argues, however, that it was objectively unreasonable for her to discharge him, because the questions she asked were only peripherally related to her workers’ compensation claim.

³In that case, we noted that reasonable compensation for an attorney’s services depends on a number of factors including, “(1) the time devoted to performing the legal service; (2) the time limitations imposed by the circumstances; (3) the novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly; (4) the fee customarily charged in the locality for similar legal services; (5) the amount involved and the results obtained; and (6) the experience, reputation, and ability of the lawyer performing the legal service.” 618 S.W.2d at 489 (citing *Connors v. Connors*, 594 S.W.2d 672, 676 (Tenn. 1980). To these, we added another factor, “whether the attorney has substantially or completely performed his duties.” 618 S.W.2d at 489.

We need not determine whether Ms. Christy's discharge of Mr. Sowell was objectively reasonable, however, because this fee dispute arose in a workers' compensation case. Consequently, it is governed by additional rules not applicable in *Adams* or *Rose*.

B. WORKERS' COMPENSATION

In contrast to the cases cited above, the present case involves a claim under the workers' compensation law, a cause of action unknown to the common law, and one which is solely a creation of the General Assembly. *Aerosol Corp. v. Johnson*, 435 S.W.2d 832, 836 (Tenn. 1968). Our legislature has specifically declared the workers' compensation law to be a remedial statute that must be given an equitable construction to achieve its stated purposes. Tenn. Code Ann. § 50-6-116. A primary purpose of the law is to ensure that injured employees are justly and appropriately reimbursed for debilitating injuries suffered while in service to their employers. *Langford v. Liberty Mutual Insurance Co.*, 854 S.W.2d 100, 102 (Tenn. 1993).

In order to protect the injured workers' rights, the legislature has set firm statutory limits upon the compensation attorneys are entitled to collect from them. Tenn. Code Ann. § 50-6-226(a)(1) reads in pertinent part,

The fees of attorneys for services to employees under the Workers' Compensation Law, compiled in this chapter, shall be subject to the approval of the commissioner or the court before which the matter is pending, as appropriate; provided, that no attorney's fees to be charged employees shall be in excess of the twenty percent (20%) of the amount of the recovery or award to be paid by the party employing the attorney.

The important point is that by statute all attorney fees in workers' compensation cases are subject to the approval of the court, notwithstanding any agreement between the client and the attorney. We note that the legislature is so protective of the workers' recovery that it has declared that any attorney who charges his or her client more than the 20% cap shall be subject to disbarment and obligated to forfeit double the entire amount retained. Tenn. Code Ann. § 50-6-226(b).

A court can decline to approve a fee that does not appear to be reasonable, even if it falls within the 20% cap. *Perdue v. Green Branch Mining Co.*, 837 S.W.2d 56, 61 (Tenn. 1992) "[t]he 20 percent ceiling set out in the statute is a maximum, which may or may not be reasonable depending on the circumstances of the case." *Id.*

In the present case, Mr. Sowell dedicated just 4.95 hours to the service of his client before she discharged him. No complaint had been filed, no settlement offers had been received, and it can hardly be said that he performed the lion's share of the work required to obtain the recovery she sought. Yet he implies that his contract entitles him to collect over \$9,000 from her. We agree with the trial court that such a fee in these circumstances would be unreasonable. We find the fee approved by the trial court to be reasonable in view of the facts and circumstances.

We must therefore conclude that the trial court did not err in limiting Mr. Sowell's recovery to payment for time he actually spent on Ms. Christy's case.

III.

The trial court's award of fees in the amount of \$742.50 is affirmed. We remand this case to the Chancery Court of Dickson County for any further proceedings necessary. Costs of this appeal are taxed to the appellant, Jim Sowell.

PATRICIA J. COTTRELL, JUDGE